Session 11

The Companies Act, 2013

With a change in the domestic and international economic landscape, the Government of India decided to replace the Companies Act of 1956 with the more contemporary and relevant Companies Act, 2013.

Objectives of the Act:

- To regulate companies
- To facilitate ease of doing business
- To protect the interest of investors
- To promote transparency and high standards of corporate governance
- To ensure full and fair disclosure of the companies in their financial statements
- To make compliance requirements more effective, and implement time bound approvals.

As per Sec. 2 (20) of the Companies Act, 2013, a company means a company incorporated under this Act or any previous company law.

Features of a company:

- Separate legal entity (Salomon V. Salomon & Co. Ltd.)
- Limited liability of members
- Perpetual succession
- Free transferability of shares.
- Separate property: A company can hold property in its own name
- Right to sue: A company can sue and be sued in its corporate name.
- A company attracts professional management.
- Huge access to funds: A company has the privilege of mobilizing huge amounts of interest-free funds from the public for its business by making a public issue or a private placement of its shares.

Types of companies

- **One Person Company:** One person company (OPC) means a company formed with only one (single) person as a member, unlike the traditional manner of having at least two members. The legal status of an OPC as an incorporated entity gives it an edge with respect to availing of loans as compared to a sole proprietorship.

- **Private Limited Company:** Section 2(68) of Companies Act, 2013 defines private companies. Accordingly, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to securities issued by the company. Minimum paid-up capital of private

limited companies should be Rs. 1 lakh.. A minimum of 2 members can create a private limited company, but it cannot have more than 200 members. A minimum of 2 directors are required to run the company.

- **Public Limited Company:** Shares of the company are freely transferable. A minimum of 7 shareholders are required to form a public limited company, and a minimum of 3 directors is required to run a public limited company. The minimum paid-up capital required for a public limited company is Rs. 5 lakhs. One of the biggest advantages is the easy mobilization of funds through shares, debentures or public deposits.

- **Section 8 company:** Not all companies have objectives of making profits by carrying out trade and commerce. Many companies primarily have charitable and non-profit objectives. Such entities are referred to as a Section 8 Company because they get recognition under Section 8 of Companies Act, 2013. These companies dedicate all their incomes and profits towards the furtherance of their objectives. Section 8 companies, unlike other companies, do not require a minimum paid-up share capital. Since these companies possess charitable objectives, the Companies Act has accorded several benefits and exemptions to them

- **Holding company**: U/S 2(46), A company is said to be the holding company of another if that particular company holds at least 50% of the share capital of the other company and has the authority to make management decisions, influences and controls the company's board of directors.

- **Subsidiary company:** Section 2(87) of the Companies Act, 2013 defines the Subsidiary Company. The subsidiary company is the company that is controlled by the holding or parent company. It is defined as a company/body corporate where the holding company controls the composition of the Board of Directors.

Session 12

Incorporation of a Company

A company being an artificial entity comes into existence only after its registration and incorporation with the Registrar of Companies. A number of formalities need to be completed before a request is made to the Registrar for its registration, and a legal process has to be completed before a company obtains its Certificate of Incorporation.

The steps involved in the incorporation of a company are as follows:

- Ascertaining name availability
- Application for the Digital Signature Certificate (DSC)
- Application for Directors Identification Number (DIN)
- Filing the proposed name of the company for approval to the Registrar of Companies
- Drafting of the Memorandum and Articles of Association
- Printing, Signing, Stamping, and vetting of both articles and memorandum of association
- Application for incorporation of the company in the prescribed form with the prescribed fees.
- After processing of the form is complete, Corporate Identity Number (CIN) is generated, and the Certificated of Incorporation is issued.

Memorandum of Association

The memorandum of association of a company is the constitution or the charter of the company. It is a contract document among the members. Section 4 of the Companies Act, 2013 provides for the content of the Memorandum of Association. The standard clauses are:

a. The name clause

b. The situation clause

c. The objects clause

d. The liability clause

e. The capital clause

f. The association clause

Articles of Association

The Articles of Association (AOA) is the second contract document signed by the subscribers and is registered at the time of incorporation of the company. While the Memorandum of Association provides the broadest framework within which corporate activities are to be confined, the AOA provides all the details and procedures for the functioning and the internal regulations of the company, e.g. rights of each class of shareholders, allotment of shares, transfer and transmission of shares, borrowing powers, holding of general meetings, the number and powers of directors, dividends, audit and accounts etc.

Doctrine of Constructive Notice:

The memorandum and articles of association, by virtue of registration, become public documents, and therefore are open to public inspection. It is desirable that every person contracting with the company must acquaint himself with these two documents in order to ensure that the contract is not inconsistent with the contents thereof. Otherwise he cannot recover damages from the company.

Doctrine of Ultra Vires:

The objects clause in the Memorandum of Association, not only determines the field of industry within which the corporate activities are to be confined, and also ensures that no act shall be dome beyond the boundaries set out therein. A company cannot take up an activity beyond its listed objectives. . Any act outside the objects clause is *ultra vires .* This rule was laid down by the House of Lords in *Ashbury Railway Carriage and Wagon Co. v. Riche.*

Doctrine of Indoor Management:

The doctrine of indoor management is the reverse of the doctrine of constructive notice. The doctrine of indoor management states that the outsiders are not expected to have knowledge about how the company's internal matters are handled by the executives of the company. Internal irregularities cannot be a basis for setting aside a contract. While the doctrines of constructive notice and ultra vires protect the company against outsiders dealing with the company, the doctrine of indoor management protects the outsiders against the company. This was established in the case of *Royal British Bank V. Turquant.*

Exceptions to the rule of Indoor Management:

- The outsider has knowledge of the irregularity
- The outsider has suspicion of the irregularity
- Forgery
- No knowledge of the articles of association.

Session 13

Raising of Capital

Share Capital

In a company, capital refers to share capital. Share capital is broken up into units called shares. A share is the basis of ownership of a company.

The initial capital is collected from the subscribers to the memorandum. But this would hardly be adequate for the needs of the business. The company would raise further capital by getting its shares subscribed, and the Companies Act makes detailed provisions for raising of capital. A private company can raise capital only privately. A public company on the other hand can raise capital from the public through IPO or an FPO.

The Memorandum of Association (MOA) mentions the amount of capital the company is being registered with. This is known as the **authorized capital** of the company.

Issued capital is that part of the authorized capital that has been offered for subscription. The **subscribed capital** is that part of the issued capital, which have been taken up by the purchasers of shares in the company, and which have been allotted by the company. **Paid-up capital** is that portion of the called up capital that the members have paid. **Reserve capital** is that portion of uncalled share capital which can be called only in case of winding up.

A company can issue two kinds of shares: Equity Shares and Preference Shares.

A **preference share** is one which carries two exclusive preferential rights over equity shares. These two special rights of preference shares are

- A preferential right with respect to the dividends declared by a company.
- Preferential right when it comes to repayment of capital on liquidation of the company.

An equity share is defined as a share which is not a preference share. Equity shareholders enjoy equity, or ownership in the company. The dividends given to equity shareholders are not fixed.

Issue of shares can be done through:

- Private placement of shares,
- Public issue, or
- Issue the shares to existing shareholders (rights issue or bonus issue)

Section 23 of the Companies Act, 2013 mentions Public Issue as a way of raising funds from the public. It means the selling of shares for subscription by the public by issue of a prospectus.

Prospectus: The Companies Act, 2013 defines a prospectus under Sec. 2(70). Prospectus can be defined as “any document which is described or issued as a prospectus”. This also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public. Such an invitation to offer should be for the purchase of any securities of a corporate body. Shelf prospectus and red herring prospectus are also considered as prospectus.

Statement in Lieu of Prospectus: The Statement in Lieu of Prospectus is a document filed with the Registrar of the Companies when the company has not issued prospectus to the public for inviting them to subscribe for shares.

The golden rule of the prospectus: Everything must be stated with strict and scrupulous accuracy. The Act imposes stringent civil and criminal liabilities for false statements in a prospectus.

Debentures

In addition to equity capital, companies also take loans to raise funds for their business. Companies often raise funds through debentures. The term debenture has originated from the latin 'Acknowledgment of Debt'. Just like equity shares, a debenture is put up to the public to subscribe for.

As per Sec.2(30) of the Companies Act,2013,"*Debenture*" includes debenture stock, bonds or any other instrument of the company evidencing a debt, whether constituting a charge on the assets of the company or not.

A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption, which shall be approved by a special resolution passed at a general meeting.

No company shall issue any debentures carrying any voting rights.

An issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue. An issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company

The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures:(a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

- (b) The company shall create a Debenture Redemption Reserve equivalent to at least 50% of the amount raised through the debenture issue before debenture redeem

● Session 14

● Company Meetings

- **Annual General Meeting:**
- Every company other than a One Person Company must hold an AGM in each year apart from other meetings.
- The procedure for holding a meeting begins with a **notice**. A general meeting of a company may be called by giving not less than 21 days' notice either in writing or through electronic mode. The notice must be accompanied by a copy of the director's report, audited accounts and the auditor's report.
- The **quorum** is the minimum number of members that must be present in order to constitute a valid meeting. The quorum for a private company is 2 members. The Companies Act 2013 has set the quorum for a public company on the basis of total membership of the company. Accordingly, 5 members personally present if the number of members as on the date of meeting is not more 1,000; 15 members personally present if the number of members as on the date of meeting is more than 1,000 but up

to 5,000; 30 members personally present if the number of members as on the date of the meeting exceeds 5,000

- The meeting is conducted by the chairman of the meeting.
- **Business to be transacted at AGM:**
- **Ordinary Business:** The following constitutes ordinary business at any AGM.
- a. Consideration of financial statements and reports of board of directors and auditors.
- b. Declaration of dividends.
- c. Appointment of directors in place of those retiring.
- d. Appointment and remuneration of the auditors.
- **Special Business** : Any other business conducted at an Annual General Meeting, and all business conducted at an Extraordinary General Meeting is special business.
-
- A company is an artificial person, therefore any decision taken by it shall be recorded in the form of a resolution. Accordingly, a resolution may be defined as an agreement or decision made by the directors or members (or a class of members) of a company. A proposed resolution is called a **motion.** A motion is always in writing, and its notice is given in advance. When a motion is passed at a meeting, it is called a **resolution,** and it is binding.
- Basically, there are two types of resolutions for a general meeting, **Ordinary Resolution** and **Special Resolution.** An ordinary resolution requires a simple majority of above 50 % of the votes. For a special resolution to be adopted, the number of votes cast in favor of the motion must be at least three times the number of votes cast against it.
-
- Some issues which require ordinary resolution: alteration of authorized capital, declaration of dividends, appointment of directors and auditors, removal of directors etc.
-
- Some issues which require special resolution: Alteration of the objects clause of the MOA, shifting the registered office of the company from one state to another, alteration of articles of association, reduction in share capital, change in the name of the company, mergers and acquisitions.
- **Extraordinary General Meeting (EGM)**: Any meeting of members of a company, other than the AGM, is an extraordinary general meeting.
- Any meeting of members of a company, other than the AGM, is an extraordinary general meeting. In other words, any general meeting between two AGMs is an EGM. All business conducted at an EGM is special business. An EGM is convened for urgent or special business. A member interested in calling an EGM can mobilize other members, totaling at least 1/10th of the total voting power, and request the board of directors to convene the meeting. If the board fails to call the meeting, the members themselves can call the meeting.

Session 15

Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. As such, it cannot act in its own person. It can do so only through some human agency.The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board.

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

Appointment of Directors:

First Directors: The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed in the general meeting of the company.

Subsequent directors:

Not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting.

Additional Directors: The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only up to the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Alternate Director: The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months. An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns.

Nominee Directors: Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of Directors to fill in a Casual Vacancy:If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Independent directors: Corporate Governance is one of the most important differentiators of a business that has impact on the profitability, growth and sustainability of business. U/S

149(4)of the Companies Act, 2013. lays down that at least one-third of the total number of directors should be independent directors in every listed company The Central Government may prescribe the minimum number of independent directors in public companies. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Woman Director:

The following class of companies are required to appoint at least one Woman Director on the board:

- every listed company;
- every other public company having paid–up share capital of 100 crore rupees or more; or turnover of 300 crore rupees or more.

Liquidation of Companies

The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. A liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights. After the conclusion of the winding up process, a resolution for dissolution of the company is passed by the members, and the life of the company comes to an end.

Compulsory Winding Up of a Company: Winding up a company by an order of the National Company Law Tribunal is known as compulsory winding up.

A petition for compulsory winding up of a company may be filed in the Tribunal by any of the following persons.

i. The Company, by passing a special resolution
ii. Petition by the contributories
iii. Petition by the Registrar of Companies
iv. Petition by the Central Government or a State Government on the ground that company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

Session 16

Property Laws for Business

Type of Property / Transaction	Relevant Legislation
Moveable Property:	a.Sale of Goods Act, 1930,

a.Sale, b. Pledge or c.Hypothecation of goods	b. The Contract Act 1872, c.The Securitization, Asset Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
Immovable Property: Mortgage, Lease or Sale of Immovable Property, Charge, Gift, Exchange, Actionable Claims	Transfer of Property Act, 1882
Intangible & Intellectual Property: a. Patents, b. Trademarks, c. Copyrights, d. Designs	a. The Patents Act, 1970, b. The Trademarks Act, 1999, c. The Copyrights Act, 1957 d. The Designs Act
Real Estate Property	Real Estate (Regulation and Development) Act, 2016

Sale of Goods Act, 1930

The Sale of Goods Act 1930 was introduced with the objective of balancing the rights, duties, claims and expectations arising in the process of transferring of property from one person to another i.e of buyers and sellers.

Goods means any kind of movable property other than actionable claims and money, and includes stocks and shares, growing crops, and grass, and things attached to land, which are agreed to be severed before sale or under the contract of sale. Goods may be existing goods, future goods or contingent goods. Existing goods may be further classified as specific goods, ascertained goods or unascertained goods.

A **contract of sale of goods** is a contract whereby the seller transfers or agrees to transfer the

property in the goods to the buyer for a price (S.4). However, when the transfer of property to take place at a future time or subject to some conditions to be fulfilled, the contract is an **agreement to sell.** While a contract of sale is an executed contract, an agreement to sell is an executory contract.

When does property pass from the seller to the buyer?

1. In case of unascertained goods, no property passes unless the goods are ascertained and unconditionally appropriated to the contract of sale.
2. When there is a contract for sale of specific or ascertained goods, the property passes at such time the parties to the contract intend the property to pass. However, if the intention of the parties is not clearly evident, property in the goods passes as per the rules laid down in the Act.
3. When goods sent on approval or 'on sale or return':
4. The property passes to the buyer:

- When the buyer signifies his approval or acceptance to the seller or
- Does any other act adopting the transaction (sells or pledges the goods to a third party) [*Kirkham V. Attenborough*]
- If the time fixed for return of the goods has expired, or lapse of reasonable time.

Doctrine of Caveat Emptor: A contract of sale of goods is governed by the fundamental principle of **Caveat Emptor**, i.e let the buyer beware. In other words, it is not the seller's duty to provide to the seller an article suitable for a particular purpose, unless such purpose is made known to the seller. It is the duty of the buyer to satisfy himself before purchasing, that the article that he buys is the one that he wants. However, there are exceptions to the rule.

Conditions and Warranties: A contract of sale is likely to contain a number of terms and stipulations, some of which might be more important, and others might be less important.

A condition is a stipulation **essential** to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated

A warranty is a stipulation that is **collateral** to the main purpose of the contract, the breach of

which gives rise to a claim of damages, but not to a right to reject the goods and repudiate the

contract

Rights of an Unpaid Seller:

Against the Goods	Against the Buyer
Right of lien	Suit for price
Right of stoppage in transit	Suit for non-acceptance of goods
Right of resale	Suit for interest on delayed payment
	Suit for damages for repudiation of contract by the buyer before the due date of performance

Buyer's remedies against the seller:

- Suit for damages for non-delivery of the goods
- Suit for specific performance
- Suit for breach of warranty
- Suit for damages for repudiation of the contract by seller before due date
- Suit for interest (delayed refund of the price)

Session 17

The Transfer of Property Act, 1882

The Act covers the following 7 types of transactions pertaining to property:

- Mortgage
- Charge
- Lease
- Gift
- Sale of immovable property
- Exchange
- Actionable claims

Mortgage: A mortgage is a **transfer of an interest** in **specific immovable property**, for securing an existing and/or future debt, or for securing the performance of an engagement which may give rise to a pecuniary liability. The transferor is the **mortgagor** (debtor). The transferee is the **mortgagee** (creditor). The principal and interest which is secured through the mortgage is called **mortgage money.** The instrument by which the transfer is executed is the **mortgage deed.**

Types of mortgage:

A. **Simple mortgage:** The mortgagor does not transfer possession. The mortgagor personally undertakes to pay the debt, and on default, the creditor has the right to have the property sold and recover the debt through a court order. The mortgagee does not enjoy the right of foreclosure.

B. **Mortgage by conditional sale**: The mortgagor makes a conditional sale of the property to the creditor. The condition is that, on default by the mortgagor, the sale becomes absolute. In other words, the mortgagee has the right of foreclosure. There is no personal undertaking by the mortgagor, and therefore the creditor cannot proceed against the mortgagor. On due payment, the sale becomes void.

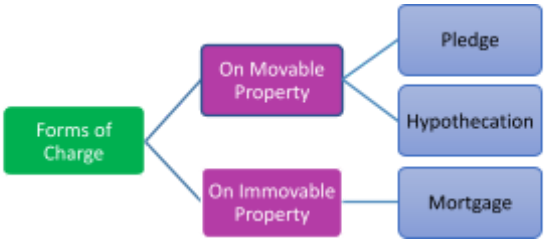
C. **Usufructuary mortgage**: The mortgagor delivers possession of the property to the creditor, who gets the right to receive rent or profits from the property. This is in lieu of the mortgage money. The creditor retains and enjoys the property till the mortgage money is repaid.

D. **English mortgage**: The mortgagor transfers the property absolutely to the creditor, upon the condition that he will retransfer the property on payment of the mortgage money. No right of foreclosure, but a right to file a suit for sale

E. **Mortgage by deposit of title deeds**: Also known as an equitable mortgage. It is effected by delivery of the title deed to the creditor. Registration is optional.

F. **Anomalous mortgage**: Not covered in any of the preceding five types of mortgage. Combination of 2 or 3 types of mortgage.

Charge: Where property is made security for the payment of money, and the transaction does not amount to only a mortgage, a charge is said to have been created on the property.



Parties to a charge: Creator of the charge (Borrower) and Charge-holder (Lender).

Fixed charge: Created on ascertained specific identifiable property, e.g. land, buildings, plant & machinery etc.

Floating charge: Charge created on unascertained and circulating assets, e.g cash, receivables, raw materials, work in process, finished goods etc. A floating charge does not attach to any definite property.

Registration of charges: Sec 77 of the Companies Act, 2013 requires every charge created by a company to be registered with the ROC within 30 days of creation of the charge in Form CHG 1 (other than debentures), and in Form CHG 9 (for debentures). The Registrar shall issue a certificate of registration of charge.

No charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered but shall not prejudice any contract or obligation for the repayment of the money secured by a charge.

Lease: A lease of immovable property is a transfer of a right to enjoy possession for a limited period of time. It can also be created in perpetuity. Any lease involves delivery of possession.

Parties: Lessor and Lessee

Consideration: Lease rent and lease premium

Short term lease: Lease for a term not exceeding one year

Long term lease : Lease for a term exceeding one year. Every long term lease of immovable property shall be made only through a registered instrument.

Gift: A gift is the voluntary **transfer** of ownership of an existing tangible movable or immovable property **without consideration** by the **Donor** to the **Donee**.

In order to be a valid gift, the gift should be accepted by the donee during the lifetime of the donor.

The Transfer of Property Act only recognizes gifts inter vivos (i.e from one living person to another living person). Testamentary gifts are outside the purview of the Act.

Any gift of immovable property shall can only be done should a registered deed.

A gift in general cannot be revoked, but in case of coercion, undue influence,

misrepresentation, fraud or mistake, a gift may be revoked. A gift can also be revoked, if such condition is included in the deed.

A minor cannot be a donor, but can be a donee.

Session 18

Real Estate (Regulation and Development) Act (RERA)

The Act establishes a Real Estate Regulatory Authority (RERA) in each state for regulation of the real estate sector and also acts as an adjudicating body for speedy dispute resolution.

To ensure greater transparency, accountability and efficiency in real estate project marketing and execution, the Real Estate Act makes it mandatory for all commercial and residential real estate projects where the land is over 500 square metres, or eight apartments, to register with the RERA for launching a project.

Salient provisions of the Act:

- Applicable on Commercial and residential Real Estate projects.
- Establishment of **Real Estate Regulatory Authority (RERA)** and Appellant Authority at state and Union Territory Level.
- Bar of jurisdiction courts from entertaining complaints with respect to matters of the bill.
- Mandatory registration of real estate projects and real estate agents. (No sale before registration).
- Public disclosure of project details at RERA site. Such as layout plans, status of statutory approvals, name and address of real estate agents, contractors, architect, structural engineer etc.

  The Act provides for arranging insurance of land title, which benefits both the consumers and developers if land titles are later found to be defective.

Registration under Real Estate (Regulation and Development) Act, 2016

- Area of land is more than 500 sq. mt. or number of apartments more than 8. (States & UT can notify more stringent criteria)
- Where requisite approvals and commencement certificate has not been obtained prior to commencement of this act.
- Where the project does not involve only renovation, repair or re-development and involves re-allotment or marketing of the project.
- If the real estate project is to be developed in phases, then registration shall be taken for each phase.

Obligations of Promoter under Real Estate (Regulation and Development) Act, 2016

- If any person is affected by any incorrect or false advertisement by the promoter, then he shall be returned his entire investment along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act.
- A promoter shall not accept an advance sum more than 10% of the total cost of unit without first entering into a written agreement for sale with such person and registration of the said agreement.
- Take previous consent of the applicant for making any addition or alteration in the plan except for some minor changes.
- To rectify structural defect or deficiency in any service brought to its notice within two years of possession.
- The interest rate payable by the promoter as well as by allottee shall be same in the eventuality of any default by either of them. Interest to be paid from the date when the amount is received.

Session 19

Intellectual Property Rights

Economic growth is driven by innovation and technology. To safeguard the fruits of research and development, it is necessary to create Intellectual Property.

Intellectual Property may be broadly classified into:

- Industrial property, i.e, Patents, designs and trademarks, and
- Copyrights granted to authors, musicians, artists etc for works of creation

The Patents Act, 1970: A patent is a monopoly right in the use of an invention.
The Patents Act of 1970 deal with the patenting of inventions. The Patents Act of 1970 deal with the patenting of inventions, and remedies for infringement of trademarks.
An inventor (or the assignee of the invention) must apply for a patent to the office of the Controller of Patents in the prescribed form. The Patent Controller's office checks the invention for novelty, utility and vendibility. If the application is successful, the applicant is granted a patent for 20 years. During this period, no other person can use the invention without authorization of the patentee.
A patent has territorial limitation. A patent cannot be renewed. After the expiry of its legal life, the invention enters the public domain, i.e, becomes a generic product.
Any unauthorized use of the patent by another person is called infringement.

Remedies for infringement of patent for the patentee:

a. Injunction (stay order) to restrain infringement
b. Damages for loss or account of profits, at the option of the plaintiff
c. Destruction of goods and implements use for production of such goods.

Inventions that are not patentable:

The following inventions cannot be patented in India;

A method of agriculture or horticulture
Any process for the medicinal, surgical or curative treatment for humans and animals
Varieties of seeds
Any invention pertaining to defense and atomic energy
Plants or animals, other than microorganisms

The Trademarks Act, 1999 Trademarks are marks or symbols businesses used in relation to goods and services, to identify their producers or manufacturers. The Act provides for the registration and protection of trademarks. Protection is available only to the holder of registered trademark.
Disputes pertaining to trademarks can arise from trademark infringement and passing off. While trademark infringement is covered by the Act, there is no protection for passing off. Passing off is within the purview of the common law of torts.

Remedies for infringement of trademark: The plaintiff may bring suit for infringement under the Trade Marks Act for:

a. Injunction to restrain the threatened use,

b. At the option of the plaintiff, damages or account of profits and/or

c. An order for delivery of the infringing labels and marks for destruction/ erasure

However, an order of injunction cannot be issued against the owner of a registered trade mark. Here, the remedy would be to initiate action for cancellation of registration.

Remedies for passing off a trademark: Passing off action under common law (against registered and unregistered trade marks):
File criminal case for

- Falsification of trademarks, or
- Falsely representing a trademark as registered.

The Copyrights Act, 1957; Works of creation are covered by copyrights. Copyright denotes the right to copy.
A copyright is movable property capable of being transferred by assignment. The term of a copyright is universally accepted as the lifetime of the author plus 60 years after his death. Only the owner of the copyright or the assignee can bring suit for infringement of a copyright.

Remedies for Infringement:

a. Injunction,

b. Damages / Account of profits,

c. Author's special right to claim the authorship of the work, d. Right to take possession of the infringing copies.

Criminal offence:

a. Any person who knowingly infringes or abets the infringement of a copyright will be punishable with both fine and imprisonment,

b. Power of the police to seize infringing copies and plates without a warrant.

Session 20

Tax Laws

A **tax** is a compulsory levy by the government within its borders to raise revenue for government spending and public expenditures.

All the various taxes in India can be broadly classified into two categories- **direct and indirect tax.**

Direct Taxes v. Indirect Taxes		
	Direct Taxes	**Indirect Taxes**
Imposed on	Income and Profits	Goods and Services
Incidence of Tax	The incidence of tax cannot be shifted to any other person	The incidence of tax is shifted from person to person
Who is liable to pay?	Assessee pays directly to the government	The end consumer pays via one or more intermediaries
Transferability	Not Transferable	Transferable
Examples	Income Tax, Securities Transaction Tax and Capital Gains Tax	Goods & Services Tax (GST), Customs Duty, Value Added Tax (VAT)
Nature	Progressive	Regressive
Administrated by	The Central Board of Direct Taxes (CBDT)	The Central Board of Indirect Taxes and Customs (CBIC)

Income Tax

The Income Tax Act, 1961 came into force from April 1, 1962, for levy, administration, collection, and recovery of income taxes in India. The income earned by an assessee during the previous year is assessed to tax in the assessment year.

Important definitions:

Previous year: previous year is defined as the financial year which immediately precedes the assessment year.

Assessment year: Assessment year is the 12 months' period commencing on 1st of April till 31st March of next year. It is the year in which the income earned by the assessee in the previous year is assessed.

Assessee: An assessee is a person who is liable to pay tax under any provision of the Income Tax Act.

Assessment: Assessment is the process of determining the correctness of income declared by the assessee and calculating the amount of tax payable by him and further procedure of imposing that tax liability on that person.

Person: As per section 2(31) of Income-Tax Act 1961, a **person** would be any one who is-

- An Individual
- A Hindu Undivided Family (HUF)
- A company
- A firm
- An association of person or body of individuals
- A local authority
- Any artificial and juridical person who is not included in any of the above-mentioned categories.

Heads of Income

The five heads under which an assessee may be assessed to income tax are:

- Income from Salaries
- Income from house property
- Capital gains
- Profit and gains from business or profession
- Income from other sources

Steps in computing income tax:

1. Compute your gross total income by including any and every taxable income from all sources.
2. Take deductions under Chapter VIA (S. 80 C – S.80U) to arrive at taxable income
3. Compute tax liability. Do not forget to add surcharge if applicable, and education cess.
4. Deduct taxes already paid through TDS or advance taxes and self-assessment tax
5. The remaining amount is the income tax payable, which needs to be paid before filing IT return.

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